

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claim 4 is currently being amended. Claim 5 is being cancelled. Claims 6-18 are being added. After amending the claims as set forth above, claims 4 and 6-18 are now pending in this application.

Information Disclosure Statement

In the Office Action of February 7, 2008, the Examiner has indicated that reference C3 (FR 2 753 903) under "Foreign Patent documents" submitted with the Information Disclosure Statement filed in the above-identified application on October 11, 2007 has not been considered, because no English translation of the reference had been provided. The Examiner's attention is directed to the IDS filed on October 11, 2007, second page, where in the first paragraph under the heading "RELEVANCE OF EACH DOCUMENT" applicants indicate that document C1 = document C3. Document C1, US 6,207,438, is the U.S. equivalent to Document C3, FR 2 753 903. Therefore, an English language equivalent document has been provided for the Examiner's consideration.

Applicants further submit herewith an English abstract of FR 2 753 903, as an attached Appendix to this document.

Applicants therefore submit that a *bona fide* attempt has been made to comply with § 1.98. 37 C.F.R. § 1.97 (f) reads:

If a *bona fide* attempt is made to comply with § 1.98, but part of the required content is, additional time may be given to enable full compliance.

Applicants respectfully request that each listed document be considered by the Examiner and be made of record in the present application and that a corrected copy of Form PTO/SB/08 be returned in accordance with MPEP §609.

Claim Rejections under 35 U. S. C. § 112

Claims 4-5 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner has agreed that “applicant is disclosing in the specification that one of these agents (or each of these individual agents) is present in an amount of 0.0001 to 20.0% by mass, preferably 0.0001 to 10.0% by mass”, but asserted that “this does not provide support for a combination of crude drugs, wherein the entire percent of these ingredients combined is that disclosed amount”. (Page 6 of the instant Office Action.)

By the present Amendment, Applicants have cancelled claim 5, and have amended claim 4 by deleting the limit of “present in the amount of 0.0001 to 20.0 by mass% as a dry substance based on the total weight of the composition”. Thus, the rejections of claims 4-5 under 35 U.S.C. § 112 are now moot.

Applicants have added new claims 6-11 to further define that one of these six agents (or each of six individual agents) is present in an amount of 0.0001 to 20.0% by mass, as suggested by the Examiner. No new matter has been added.

Claim Rejections under 35 U. S. C. § 101

Applicants acknowledge and thank the Examiner for withdrawing the claim rejections under 35§ U.S.C. 101.

Claim Rejections under 35 U. S. C. §§ 102 (b) and 103(a)

Claims 4-5 are rejected under U.S.C. § 102 (b) as being anticipated by Kitada et al. (N*, JP 10-017459 A), Ito et al. (O*, JP 08-109122 A), Matsui et al. (P* JP 05-032537 A), and Kitada et al. (Q, JP 10-017458 A). Claims 4-5 are also rejected under U.S.C. § 103 (a) as being unpatentable over Tominaga (A*, U.S. 5,747,049), in view of Kitada et al. (N*, JP 10-017459 A), et al. (O*, JP 08-109122 A), Fugitani et al (R*, JP 11-228437 A), and Matsui et al. (P*, JP 05-032537 A).

Kitada ‘459 relates to alleviating “dullness” from skin aging. Ito discloses alleviating rough skin or desiccated skin caused by aging of the skin. Matsui teaches a skin cosmetic which is effective in preventing aging by promoting the production of collagenase. Kitada

'458 relates to alleviating "darkening" of the skin. Fujitani discloses a cosmetic effective in preventing skin aging by inhibiting hyaluronidase. Tominaga discloses a method of inhibiting cutaneous aging, however, there is no suggestion by Tominaga that the present compositions themselves would be useful as active agents, or that they were actually used.

The Examiner has agreed that none of above references teach or suggest a method of inhibiting photoaging. However, the Examiner has asserted that the functional effect of inhibiting photaging is inherent in the method of using the composition taught by Kitada.

Applicants have amended claim 4 to recite "a method of inhibiting photoaging in a subject in need thereof" in order to overcome the prior art rejections. The preamble, "in need thereof", is not merely a statement of effect that may or may not be desired or appreciated, but rather is a statement of the intentional purpose for which the method must be performed. *Jansen v. Rexall Sundown, Inc.*, 342 F.3d 1329, 1333-34, 68 USPQ2d 1154, 1158 (Fed. Cir. 2003). The references cited by the Examiner are silent in respect of inhibiting or preventing skin damage caused by exposure to sunlight. None of these references teaches that any of the disclosed formulations are capable of inhibiting neogenesis of endothelial cell or effective in inhibiting or preventing photoaging, i.e., skin damage caused by exposure to sunlight. Accordingly, Applicants believe that the claimed method of claim 4 is not anticipated by, or obvious over, the cited references. Claims 6-11 depend from claim 4, and thus are patentable for at least the same reasons.

By the present Amendment, Applicants have added new claims 12-18 to recite "a method of inhibiting wrinkles caused by photoaging in a subject in need thereof". Claims 12-18 should be patentable for at least the same reasons as those discussed above. Support for the new claims may be found, for example, in Paragraph No. [0008] of the published application (U.S. Publication Number 2005/0220810). No new matter has been added, and Applicants submit that no new search is necessary.

Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date May 29, 2008

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5569
Facsimile: (202) 672-5399

Stephen B. Maebius
Attorney for Applicants
Registration No. 35,264

Appendix: English Abstract of FR 2-753-903

Title: Depolymerised sodium alginate - for treating skin disorders and to protect against ultra violet radiation

Inventor: GEDOUIN J; VALLEE R

Abstract:

Depolymerised sodium alginate composition for preventing and treating skin disorders produced by depolymerising a natural sodium alginate extract.

Also claimed is a product for preventing and treating skin disorders, comprising oligo-alginate and uronic acid chains.

USE - The product can be used to:

USE - (1) protect epidermal Langerhans cells against UV radiation;

USE - (2) to increase epidermal interleukin-1alpha levels;

USE - (3) to provide an antiradical effect against free radicals produced by UV radiation;

USE - (4) to protect skin cells against protein oxidation and DNA fragmentation;

USE - (5) to inhibit 5alpha-reductase activity, and (6) to inhibit Propionibacterium acnes.